

Lessons Learned from Procurement

South West Regional Provider Forum & Regional Implementation Group

September 2008

1. INTRODUCTION:

The South West Regional Provider Forum (RPF) and the South West Regional Implementation Group of SP Managers (RIG) wished to share the lessons learned from the experience of SP teams and providers of procuring SP funded services.

It was agreed by both groups that a survey should be conducted on the basis of anonymous responses so that all participants would feel free to share both negative and positive feedback. Provider experiences were surveyed and collated by Glynis Sampey at Sitra using a web-based survey which enabled responses to be made anonymously. SP teams' feedback was obtained using the same questions on a proforma emailed out by and returned to the RIG co-ordinator, Tim Othen. The responses from the two surveys were then shared in confidence by Glynis and Tim so that the experiences of both parties of the same procurement process could be compared.

The survey was intended to draw out providers' and commissioners' experiences so that themes and common ground which would be a basis for learning from these experiences could be identified. The survey was therefore designed to generate qualitative data from free text descriptions. Due to the subject matter, and the anticipated volume of replies, it was not expected that the survey would produce quantitative data such as statistics on how many respondents were satisfied or dissatisfied with aspects of their experience. Responses were received from 13 out of the 15 Administering Authority areas for the providers' survey and seven out of 15 for the commissioners' survey. A range of provider organisation sizes and types responded. Further summary information on responses is attached as an Appendix to this report and anonymised transcriptions of the text of all replies can be provided if required.

Because the intention was to identify common ground, the analysis has focused particularly on areas where both providers and commissioners had expressed views. There were many other points made in both surveys where no corroborating or conflicting experience could be identified in the other survey. Therefore the respondents' experiences which have been collated and summarised in Section 2 of this report are not a comprehensive record of all submitted but focus on the areas where lessons for improved practice can be drawn out. The recommendations which can be derived from these shared experiences are then outlined in Section 3.

2. ISSUES RAISED:

2.1 ISSUES SHARED BY BOTH PROVIDERS AND COMMISSIONERS

Comparison of the responses showed that on a number of aspects of the process which were identified as of crucial importance by both providers and commissioners, there was a shared understanding of what constituted good or bad practice. There were, even so, some differences in emphasis and in attributing causes of problems.

Timetables: many respondents in both surveys referred to difficulties being caused by unrealistically short timescales at various stages of the procurement process. There appeared to be:

- significant under-estimation of the work involved for both commissioners and providers in preparation, submission and evaluation of tender documents and, post-tender award, in contract termination, hand-over and start-up.
- problems with the timescale for contract award decisions arising not from the workload but from the lack of planning for decision making or understanding of corporate procedures, e.g. not foreseeing where a tender timetable had to fit with a Council meeting timetable.

Accommodation provision: a number of respondents in both surveys commented on the need for early engagement and negotiation with the landlords of accommodation based services. References were made to

- commissioners not predicting the impact on or reactions of accommodation owners to changes to support contracts, and
- plans to reconfigure services through tendering having to be changed or suspended.

Transfer of staff & TUPE: respondents to both surveys noted that dealing with transfers of staff to new services within the TUPE regulations is challenging because it is both complex and time consuming. This was reported even in a handover which all parties thought had gone well, while there were a number of other instances where both commissioners and providers described misunderstandings, misinformation, and lack of co-operation or engagement, causing delays or distress for the staff involved, and, despite people's best efforts, disruption of services to users.

Tender documentation questions: there was a level of agreement that the tender documents being sent out were extremely complex and that some providers, who might well have been good at service delivery, were getting tripped up by the process. However responses to this problem varied. Some commissioners reported on action they were taking to facilitate participation, such as pre-tender briefings and guidance on what information was needed, while others commented only on providers failing to understand what they were being asked. Providers' responses were generally expressing frustration at the complexity and lack of clarity. The question and answer processes (reference was made to both logging and circulating written Q & As and holding open Q & A forums) were seen as useful by all parties who had used them.

2.2 ISSUES WHERE NO COMMON GROUND BETWEEN PROVIDERS AND COMMISSIONERS

Consultation and information: while some instances of good communication were reported in both surveys, there were also a number of instances of communication not being meaningful or productive because of:

- Timescales being squeezed & problems of attendance at meetings
- Information being changed after issued
- Consultation at a strategic level not a substitute for consultation at service or tender level
- Out-going providers slip off the commissioner's radar after tender decision made

Managing relationships: some of the providers' responses described high levels of anxiety, frustration, mistrust and anger at perceived unfairness or mishandling of processes. In both surveys there were accusations of a lack of professionalism by the other party, which could indicate that all were underestimating the stress generated by the competitive procurement process, the emotional impact that such

stress has and its impact on our behaviour. There were a number of comments on the neglect of communication with out-going providers.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1 Timetables: there is no regulation-related reason for commissioners to impose a timetable which gives the minimum calendar days required by an EU/Part A procurement procedure. Given the widespread problems this issue causes for all parties, there is a good case for extending the times allocated to all stages of the process.

For the post-tender submission stages (i.e. evaluation, award notification, contract termination and new issue), commissioning staff need to take account of their own decision-making requirements, e.g. have established whether an evaluation panel has delegated authority to make contract award decisions or must wait for ratification by another body or committee. They must also take account of the volume of work involved for providers (which comes on top of day-to-day service operation) of closures and transfers of services.

While support for the part that partnerships, sub-contracting and consortia can play in maintaining a diverse provider sector and helping retain the expertise of small providers is often expressed, for any encouragement to be more than tokenistic, notice of intent to invite such bids needs to be in the order of six to twelve months, rather than weeks.

3.2 Accommodation provision: as their plans move on from floating support services to accommodation based services, it is essential that commissioning staff engage in dialogue with service providers, and their housing authority colleagues, to ensure they understand inter-dependencies and linkages in housing and support provision. Acknowledging that they cannot control the continued provision of housing for support service users should be taken into account in their impact assessments. Accommodation based service providers should review the service rationale (i.e. how a combined service works for the benefit of service users) as well as the business reasons for joint service delivery in order to engage in this debate in a way that cannot be dismissed as protectionism.

3.3 Transfer of staff and TUPE: given the scale of the difficulty this causes everyone, it would be worth the commissioning team buying in a specialist workshop for their own and their providers' staff before they embark on a major re-commissioning exercise. While local authority legal staff will caution against anything that could risk offering answers to individual queries, a general briefing could helpfully reduce the level of confusion on the subject. The time needed to assess and make provision for TUPE related negotiations also needs to be taken into account in timetabling. The extent to which commissioning staff can distance themselves from any TUPE related difficulties with service handovers needs to be addressed in the planning stages. Where there is a complex reconfiguration of services, it is unlikely that out-going and in-coming provider organisations, none of whom will have the complete picture, can by themselves resolve which existing service users and which existing staff should be transferring to which new service.

3.4 Tender documentation: there is a long way to go to improve quality on this in many areas. There is already published good practice information available to commissioners which if followed would help all parties. The CLG's Guide to Procuring Care & Support Services (available to all on the spkweb at http://www.spkweb.org.uk/Subjects/Capacity_building/Procurement+guide+templates

[.htm](#)) includes detailed advice, check lists and templates which commissioning staff can use so there is no merit in repeating all that advice here. Corporate procurement teams have often no knowledge of the support sector and will give inappropriate advice if they do not understand issues such as interdependencies with accommodation or care services or the diverse nature of the current provider market. A further point which emerged from the survey was that many teams would benefit from using a good proof-reader-plus in their final preparation stage so that they don't send out packs which contain conflicting instructions or instructions which create avoidable duplication of effort. Providers would like commissioners to show more awareness that time spent tendering is time not spent on service delivery or improvement. Some commissioners have begun to calculate their staff time spent in order to properly factor this into their assessments of value for money achieved (e.g. work by Hampshire CC) but consumption of provider resources should also be taken into account.

3.5 Communication: Better communication between commissioners to improve awareness of the impact of timetables and commissioning decisions on neighbouring or linked services was an additional recommendation in the survey feedback. Many of the issues relating to information and consultation between commissioners and providers are covered in the good practice guides referred to above. Although the Guide to Procuring Care & Support Services does refer to post-award feedback to losing bidders, its short section on transitions does not fully address the issue of liaison or support for handover of services from out-going to new provider. However a De-commissioning Protocol developed by Somerset CC in 2005 and circulated in the region does address many of the same issues that arise in these circumstances and would be a useful reference. The difficulties of managing distress and maintaining good working relationships in very stressful circumstances have to be recognised. Introducing competitive markets does increase competitive behaviour but there are still many provider organisations in the sector whose staff care passionately about the work they do and will not be able to view re-commissioning of the services they provide as just any neutral business process.

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APPENDIX

Responses:

1. PROVIDERS SURVEY

Total started survey 48, total completed all survey questions 28 (58.3%)
Responses received on procurement carried out by: BANES 1, Bristol 5, Cornwall 7, Devon 2, Dorset 3, Gloucestershire 3, North Somerset 3, Plymouth 8, Poole 2, Somerset 2, South Gloucestershire 3, Swindon 2, Wiltshire 3 (i.e. Bournemouth 0, Torbay 0)
Service Type: All (floating and accommodation based services)
Client group: All (except travellers)
Capacity: Range from 6 clients to 800+ clients, also commissioned by support hours or by maximum price
Service: New 11, existing yours 24, existing other provider's 9
Procurement method used (non-competitive negotiation; open or restricted tendering; framework agreement; other): All
Year of contract award: between 2002-2006:15; between 2007-2008: 25
Did you win/lose/decide not to bid/other outcome? Won 16, Lost 10, Awaiting outcome 2, Decided not to bid 3, Disqualified 1, LA stopped process 1
Responding organisations size: Under 50 clients 8, 50 clients or more 35 Work with one client group 13, More than one client group 31 Work in one LA area 14, More than one LA area 29
Responding organisation type: Statutory Provider 3, RSL 12, Charity/VCS/IPF 21, Private 6, Other – Consortium 1

2. COMMISSIONERS SURVEY

- 13 Survey responses received (from 7 authorities)
- Manner of completion varied; some responded for specific tenders, one gave general feedback based on a number of procurement exercises
- Service type – 7 FS, 2 AB, 2 AB/FS, 2 not specified
- Client group – all
- The capacity figures varied from 12 to 220, and some gave hours rather than numbers
- 2 new services, 2 not specified, 8 re-commissioned from existing services, 1 combined new and re-commissioned from existing services
- Procurement method – 5 open, 2 competitive, 1 non competitive negotiation, 3 restricted tendering, 1 not specified, 1 all types
- Year of contract award – 2 in 2006, 2 in 2007, 7 in 2008, 2 not specified
- 3 surveys were not fully completed, due to the authority having not completed the latter stages of the procurement process at the time of responding